

SENATE BILL No. 322

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38-8.

Synopsis: Expungement of conviction records. Allows a sentencing court to expunge the arrest and conviction records of a person who committed a felony before the person was 25 years of age after the elapse of 20 years after the completion of the person's sentence and any other obligations imposed on the person as a part of the sentence.

Effective: July 1, 2003.

Clark

January 15, 2003, read first time and referred to Committee on Judiciary.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 322

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-38-8 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]:

4 **Chapter 8. Expungement of Conviction Records**

5 **Sec. 1. This chapter applies to all records, including juvenile**
6 **records, created as a result of allegations that a person committed**
7 **a felony before the person became twenty-five (25) years of age.**

8 **Sec. 2. After the elapse of twenty (20) years after the last date a**
9 **person completes the person's sentence and any other obligations**
10 **imposed on the person as a part of the sentence, the person may**
11 **petition the sentencing court at any time to remove from:**

- 12 (1) a court's files;
13 (2) the files of law enforcement agencies;
14 (3) the files of the department of correction; and
15 (4) the files of any other person who has provided treatment
16 or services to a person under a court order;
17 **those records pertaining to the person's involvement in criminal or**



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1 juvenile court proceedings.

2 **Sec. 3. In considering whether to grant an expungement petition**
 3 **under this chapter, the court may review any of the following:**

4 (1) Whether the person has been rehabilitated to the court's
 5 satisfaction.

6 (2) Any other mitigating factors, including the following:

7 (A) Job performance.

8 (B) Job retention.

9 (C) Community service.

10 (D) Fulfillment of family and child support obligations.

11 (E) Completion of restitution to the victim.

12 **Sec. 4. The court may not grant the expungement petition if the**
 13 **person has been convicted of:**

14 (1) any felony; or

15 (2) a Class A misdemeanor;

16 that the person committed on or after the date the person became
 17 twenty-five (25) years of age.

18 **Sec. 5. If the court grants the expungement petition of a person**
 19 **under this chapter, the court shall do the following:**

20 (1) Order each law enforcement agency and each person who
 21 incarcerated, provided treatment for, or provided other
 22 services for the person under an order of the court, including
 23 the department of correction, to send the person's records to
 24 the court.

25 (2) Order any state, regional, or local central repository for
 26 criminal history information to send the person's records to
 27 the court.

28 (3) Seal any court records related to the allegation and any
 29 proceeding related to the allegation.

30 (4) Notify the clerk of the supreme court to seal any records
 31 in the clerk's possession concerning the allegation or any
 32 proceeding related to the allegation, if an appeal was taken.

33 **Sec. 6. If the expungement petition of a person is granted under**
 34 **this chapter, information concerning the person's arrest or**
 35 **conviction may not be placed or retained in:**

36 (1) any state central repository for criminal history
 37 information; or

38 (2) any other alphabetically arranged criminal history
 39 information system maintained by a local, regional, or
 40 statewide law enforcement agency.

41 **Sec. 7. If an expungement petition is granted under this chapter,**
 42 **the records of the sentencing court, a juvenile court, a court of**

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1 appeals, and the supreme court shall be permanently sealed. Other
2 records may be destroyed or given to the person to whom the
3 records pertain.

4 Sec. 8. (a) If a person whose records are expunged under this
5 chapter brings an action that might be defended with the contents
6 of the records, the defendant is presumed to have a complete
7 defense to the action.

8 (b) For the plaintiff to recover in an action described in
9 subsection (a), the plaintiff must show that the contents of the
10 expunged records would not exonerate the defendant.

11 (c) In an action described in subsection (a), the plaintiff may be
12 required to state under oath whether:

13 (1) the plaintiff had records in the criminal justice system;
14 and

15 (2) those records were expunged.

16 (d) If the plaintiff denies the existence of the records in an action
17 described in subsection (a), the defendant may prove the existence
18 of the records in any manner compatible with the law of evidence.

19 Sec. 9. After a court orders a person's records to be expunged
20 under this chapter, the person shall be treated for all purposes as
21 if the person had not been arrested or convicted of the expunged
22 felony.

23 SECTION 2. [EFFECTIVE JULY 1, 2003] IC 35-38-8, as added
24 by this act, applies to all felonies regardless of when the offense was
25 committed.

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